

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of )  
Modification and Clarification of Policies and )  
Procedures Governing Siting and Maintenance )  
of Amateur Radio Antennas and Support )  
Structures, and Amendment of Section 97.15 )  
of the Commission's Rules Governing the )  
Amateur Radio Service )

To: The Commission )  
\_\_\_\_\_ )

**RM-8763  
(FCC 01-372)**

**REPLY COMMENTS TO PETITION FOR RECONSIDERATION**

**Opening Remarks**

On December 18, 2001 the Commission denied the Application for Review of RM-8763 submitted by the American Radio Relay League Inc., (ARRL). The Commission's action did not consider certain facts which are material to the matter and were not part of the original Petition or Application for Review of RM-8763.

I am one of nearly 700, 000 licensed Amateur Radio Operators. It has been my observation that in three different regions of the US in which I have traded residential real estate (five homes traded in the past six years, and countless others reviewed), nearly all prospective homeowners purchasing or leasing newly constructed single-family style homes find that they are *necessarily* governed by a homeowners association and its attendant architectural review

committee. *Almost invariably*, such homeowners face a universal and total ban on any exterior antennas on residential homes, with the notable exceptions for which the FCC (Commission) has mandated accommodation of outdoor antennas for specific radio services. The practice of land developers “offering” restrictive covenants to new home buyers (and consequently all subsequent owners in such a development) has become so widespread that restrictive covenants can no longer be viewed as *private contractual agreements*. Rather, the ubiquitous requirement that homebuyers *must accept* restrictive covenants has reached a point of legalized extortion.

Additionally, on May 7, 2001, Mr. Lee Mcvey, P.E., W6EM (McVey) filed a Petition (Petition) for Rulemaking with the Commission’s Wireless Telecommunications Bureau which was awaiting Commission action. Said Petition, McVey believes, contains substantially different, relevant material, much of which was not presented by the ARRL. McVey contends that his Petition was not considered by the Commission *en-banc* in preparing its *Memorandum Opinion and Order* FCC 01-372. Further, material included as part of said Petition and McVey’s original Petition for Rulemaking relates to the extension of preemption in 47 CFR §1.4000 to two-way, wireless Internet service antennas, which occurred well after the ARRL Application for Review had been filed.

In agreement with Mr. McVey, it too is my belief that the additional material will present sufficient additional evidence to warrant reconsideration by the Commission of the instant Order (Order) and its decision with respect to preemption of private land use Conditions Covenants and Restrictions (CC&R’s) as they impact the installation of antennas in the Amateur Radio Service.

### **Goals for the Amateur Service Cannot Be Met**

In its findings in 01-372, the Commission considers the Amateur Service to be functional in spite of the inability to construct antennas at homes and residences, relying instead upon use of portable, remote and vehicular installations. Although one of the stated purposes of Amateur Radio is *a continuation and extension of the amateurs' proven ability to contribute to the advancement of the radio art*, such advancement cannot easily occur by simply operating manufactured hand held or mobile appliance radios. Especially since most experimental work requires a comfortable workspace, test equipment and means to construct, modify or breadboard electronic circuitry. This is clearly not something easily done on a remote mountaintop or inside of a car or truck. Radio experimentation and furtherance of the art cannot easily be done without some form of conveniently available, properly adjusted antenna to test or evaluate systems or concepts in communication with other amateurs.

Yet another stated purpose of amateur radio is *the continuation and extension of the amateur's unique ability to enhance international goodwill*. With operation restricted to only handheld or mobile use, amateurs cannot reliably and frequently make contact with international stations, making this goal unattainable, also.

Contrary to the conclusions reached by the Commission in 01-372, without the ability to install external antennas at homes of Amateur licensees, Commission goals for the Amateur Service as paraphrased above and codified at 47 CFR §97.1(b) and §97.1(e) cannot effectively

be met. How then, does the Commission intend to enforce these codified federal objectives in the face of excessive, restrictive, and burdensome local regulation?

### **Promotion of New Technologies**

The Order also references preemption of antenna restrictions for so-called Over The Air Receiving Device (OTARD) antennas and attempts to differentiate between the commercial, two-way wireless services which are described as *new telecommunications technologies* and the Amateur Service. The Telecommunications Act of 1996 was cited as a basis for the promotion of new telecommunications technologies and the justification for applying preemptive authority only to antenna installations for commercial, two-way Internet services. Ironically, the very medium used by this new technology, packetized digital communication, was itself invented about 15 years ago by the Tucson, Arizona Amateur Packet Radio (TAPR) community. If TAPR's membership at that time had to cope with the extensive antenna restrictions now in place across the US and the Commission's conclusion that mobile or portable operation is sufficient, the technology probably would not have been conceived and fully developed to the extent now enjoyed by millions on a daily basis. It is a well-known and well-understood fact that the Amateur Radio Service has been, and continues to pioneer and to promote new technologies.

### **Equal Protection**

The Fourteenth Amendment to the United States Constitution guarantees *equal protection under law*. The Commission has clearly not applied this protection law, with which it is

empowered, fairly and equitably to all licensed wireless services. Yet, the Amateur Radio Service and the Part 95 personal Radio Services—services that are used in fixed service almost exclusively in residences—have been explicitly excluded from such protection. In reaching this conclusion, the Commission has written 47 CFR § 1.4000, and the instant *Memorandum Opinion and Order* contrary to the intent of the Fourteenth Amendment to the United States Constitution.

### **Reasonable Antenna Accommodation**

Also rejected was the concept of reasonable size, type or orientation of Amateur Radio antennas, something, which is uniquely included in the OTARD preemption. For example, the size of OTARD antennas is limited to one meter or less in diameter or diagonal measure. A height, width, orientation or other limitation could have been promulgated, but the Commission opined that this would be *too complicated for Homeowner Associations (HOA's) and Architectural Review Committees (ARC's) to consider*. If HOA's and ARC's can be expected to understand maximum dimensional requirements, safety considerations and orientations for OTARD antennas, then it follows that similar limitation requirements for basic Amateur Service antenna size and orientation could be specified by the Commission and accepted and understood by HOA's and ARC's. I can assure the Commission that as the senior ARC member of the community in which I reside, that I fully understand the objectives and concepts set out in this paragraph, and indeed in this entire proceeding!

### **Significant Additional Commission Expense for Waiver and Declaratory Ruling Process**

It is reasonable to anticipate some expense and burden to the Commission and its staff to hear Petitions for Waiver and Declaratory Ruling under the limited scope of preemption of end user antenna restrictions contained in 47 CFR § 1.4000, owing in part to the possible combinations of dual/common use of a single antenna by more than one service, multiple antennas for multiple, permitted and non-permitted wireless services on common support structures, non-dish antennas, and other uniquely complex and confusing situations.

Local homeowner associations, boards, and landlords would not normally be expected to be capable in and of themselves of clearly discerning what would be permitted and non permitted antennas other than simply by their size, dimensions, orientation, and general appearance. And, in the absence of such guidance, their actions may possibly result in excessive and perhaps even frivolous use of Commission staff resources in the Commission's Declaratory Ruling and Waiver processes at 47 CFR §1.4000 (c) and (d). It would be far simpler and more cost effective for all parties involved to simply designate maximum sizes, heights, or orientations for all antennas, irrespective of wireless service, in preemptive language at 47 CFR §1.4000.

### **Amateur Radio and Other Services May Be Unfairly Targeted in CC&R Language**

Title 47 CFR §1.4000(d) includes provisions for seeking Declaratory Ruling by the Commission to challenge CC&R property or premise use restrictions, private covenants and rules insofar as they impact the fixed wireless services covered by the regulation. Rulings under this section will undoubtedly result in new or revised CC&R language written to exclude permitted services from restrictions and to more specifically restrict other regulated, Commission

authorized, end user telecommunications services such as the Amateur Radio Service and the General Mobile Radio Service.

Unless Amateur Service antennas and their operation are also included in preemptive language, at least on some limited basis, it follows that cleverly written, targeted property use restrictions may eventually result in the complete demise of the Amateur Radio Service, contrary to the Commission's goal of "Expansion of the existing reservoir within the Amateur Service of trained radio operators, technicians and electronic experts" at 47 CFR §97.1(d). How does the Commission intend to enforce and uphold this codified federal objective, in this instance? How will the existing reservoir of Amateur Service trained radio operators, technicians and electronic experts be expanded and enhanced by denying them *the bulk* of their privileges granted by law (47 CFR Part 90 et seq.)?

Language has already been devised, as in the case of the Conditions Covenants and Restrictions on our property, which goes far beyond antenna restrictions to intimidate Amateur operators or prospective operators. For example, "No such device is permitted under any circumstances if it sends, contributes to or creates interference with any radio, television or other communications reception or interferes with the operation of other visual or sound equipment located within any part of the Subdivision." Jurisdiction in radio interference (RFI) matters is the *exclusive* domain of the Federal Communications Commission. Surely the Commission does not intend to subrogate its exclusive authority, to subject Commission licensees to burdensome and unnecessary additional regulation at the local level.

Clearly, such language serves to specifically discourage operation of Amateur Radio equipment, exclusive of whether the interference was the result of improper emissions from the Amateur transmitter or improper design, installation or use of consumer-grade equipment (often Part 15 devices) being interfered with.

### **Conclusion**

Based on the foregoing, I support Mr. McVey's request that the Commission set aside and reconsider its *Memorandum Opinion and Order*, FCC-01-372, and find instead that the Commission is compelled to apply its preemptive authority granted under the Communications Act of 1934 to Conditions, Covenants and Restrictions and other private land use restrictions where they impair, discourage or prohibit altogether the installation or operation of antennas and other facilities necessary to meet codified and clearly articulated Federal objectives promoting the proper and satisfactory function of stations in the Amateur Radio Service. Doing so constitutes an appropriately *deregulatory* atmosphere in which to foster Amateur radio and that service's enormous contributions in advancing new technologies and in providing enhanced and fully interoperational vital Homeland Defense operations communications.



Dated this 7th day of June, 2002  
In Melbourne, Florida

Alan Dixon, N3HOE

Retired Senior Telecommunications Engineer  
Contributing Editor, *Popular Communications* Magazine  
FCC licensed General Radiotelephone Operator PG-4-19631  
FCC licensed GMDSS/Radar Operator and Maintainer DB-GB-005305  
FCC licensed Radio Operator – Amateur *Extra* class N3HOE  
FCC licensed General Mobile Radio Service system WPUC72Ø  
Member, American Radio Relay League  
Official Emergency Station, Southern Florida Section  
Member, Amateur Radio Emergency Service  
Member, REACT International  
Member, Salvation Army Team Emergency Radio Services  
Former Member, EIA/TIA Standards Committee (TR-45 AHAG)  
CORES FRN # 0003-3350-56

Founding member, Monaco Estates Homeowners Association Architectural Review Committee

2721 Maderia Circle  
Melbourne, Florida  
32935-5594  
[n3hoe@arrl.net](mailto:n3hoe@arrl.net)